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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,697	09/23/2003	Takashi Okaji	UNIU79.015AUS	2203

20995 7590 01/27/2009
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EXAMINER

LOFTIS, JOHNNA RONEE

ART UNIT	PAPER NUMBER
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3624

NOTIFICATION DATE	DELIVERY MODE
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01/27/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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DETAILED ACTION

1. The following is a final office action upon examination of application number 10668697. Claims 1-3 and 5-6 are pending and have been examined on the merits discussed below.

Response to Arguments

2. Applicant's arguments filed with respect to previous rejections under 35 USC 101 have been fully considered but they are not persuasive. Applicant is referred to the memorandum dated January 7, 2009 for guidance regarding statutory subject matter under 35 USC 101. The test for a method claim is whether the claimed method is (1) tied to a particular machine or apparatus, or (2) transforms a particular article to a different state or thing. This is called the "machine-or-transformation test".

There are two corollaries to the machine-or-transformation test. First, a mere field of use limitation is generally insufficient to render an otherwise ineligible method claim patent-eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test. Regarding claims 1-3, the claims do not specify which step or steps are carried out by the particular machine or apparatus. The claims as currently written are given the broadest reasonable interpretation. With that in mind, Examiner asserts it is not clear if only the receiving step is carried out by a computer. If that is the case it

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would be considered extra-solution activity. It is requested that Applicant amend claims to more clearly point out the particular machine and which steps it performs.

Regarding claim 5, it is not clear what is being claimed. Is the claim directed to a system? Currently, the claim is directed to software. While it is installed in a computer, there is no structural relationship to make the claim statutory under 35 USC 101. See rejections below.

3. With respect to Applicant arguments directed to the previous rejection under 35 USC 103, Examiner respectfully disagrees. Applicant argues Aoki does not teach producing two different products. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., production of two different products) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner points to column 3 as an example of Aoki disclosing a number of products being produced. It is clear that Aoki is directing to producing several products for an order. While the reference may teach producing the same product in multiples, the claims do not distinguish from the prior art since they do not specify the plurality of products are distinct.

4. With respect to Applicant's argument that Aoki does not teach production scheduling being repeated periodically so delivery dates are complied with. Examiner points to columns 5 and 6 wherein Aoki teaches the periodic updating of feed dates based on capacity and availability. If a vacancy of the producing apparatuses is found, the load of the order is reallocated (changed) to begin at an earlier date; this process is repeated; as the delivery date is

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moved up this keeps in compliance with scheduled delivery creating a pattern in which as new vacancies arrive, the start dates can be moved up. Previous rejections are upheld.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-5 are rejected under 35 U.S.C. 101. Regarding claims 1-3, 7 and 8, based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be performed without the use of a particular apparatus. While information is stored in a database, there is only a nominal tie

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between the method and apparatus. Specifically, the claim limitation directed to the analysis of the data must positively recite the apparatus to which it is tied. Thus, claims 1-4 are non-statutory since they may be performed within the human mind.

Further, claim 5 is also rejected as being directed toward non-statutory subject matter. The claim is directed to software per se. Claim 5 recites “a production scheduling management software program installed in a computer”. As drafted, the claim fails to define any structural and functional interrelationships between the software per se and other elements of the invention that permit the software’s function to be realized. (See MPEP § 2106 Section IV B 1 (a)).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki, US 5,325,304, in view of Seth et al, US 7,065,499.

As per claim 1, Aoki teaches receiving information of customer orders and information of and storing into a received order database (column 2, lines 43-48 – order information is stored in an order data file); dividing orders stored in said received order database based on a reference master having various kinds of information about production materials registered therein, and storing the information of the orders which have been subjected to the division process to a received order division database (data file; column 5, lines 8-31 – ordered products are analyzed

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to determine how many products can be fulfilled by stock products and how many are necessary to be produced; the orders are stored in a data file); applying a process development to the orders which have been subjected to the division process, based on a basic unit master and storing into a process development database (column 5, lines 32-41 – a feeding plan is determined from standard production periods based on previous orders); specifying an optimum production starting date based on the information of orders which have been subjected to the process development and a production pattern stored in a production pattern database, performing loading, and storing results of the loading into a production planning database (column 5, lines 32-41 – an optimal start date is determined based on standard production periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the latest feeding (start) date is 11/9); creating delivery date answer information based on said optimum production starting date (column 5, lines 32-41 – an optimal start date is determined based on standard production periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the latest feeding (start) date is 11/9); and wherein said production pattern describes a sequence of production of a plurality of products, and it set in such a manner that a production scheduling is repeated periodically and that the compliance rate of delivery date of a target product becomes a maximum (column 5, lines 32-67 – the delivery date is kept at a maximum, while the feeding day varies to accommodate the delivery date. For each different product, a feeding day is calculated. See column 5, lines 50-61 which specifically indicates more than one product is being produced and each product is scheduled in sequence (first process producing two apparatuses is scheduled so that it takes place prior to second process producing one apparatus).

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Aoki does not explicitly teach prospect orders. Seth et al teaches gathering product queries and requests including customer committed orders as well as forecasted orders in an analogous art of for the benefit of processing the orders to arrive at a promised delivery date. It would have been obvious to one of ordinary skill in the art at the time of the invention to include both customer orders and forecasted (prospect) orders in the methodology of Aoki as a way to achieve the expected results of fully anticipating demand requests so as to ensure products are available when promised.

As per claim 2, Aoki teaches changing a production scheduling stored in said production planning database (column 5, lines 42-67 – if a vacancy of the producing apparatuses is found, the load of the order is reallocated (changed) to begin at an earlier date).

As per claim 3, Aoki teaches displaying a production scheduling stored in said production planning database and production results in a compared manner (column 6, lines 9-47 - comparing the scheduled production delivery date with the appointed delivery date from the customer and displaying the scheduled date delivery and number of missing days so that an operator can change the delivery date).

As per claim 5, Aoki teaches receiving information of customer orders and information of and storing into a received order database (column 2, lines 43-48 – order information is stored in an order data file); dividing orders stored in said received order database based on a reference master having various kinds of information about production materials registered therein, and storing the information of the orders which have been subjected to the division process to a received order division database (data file; column 5, lines 8-31 – ordered products are analyzed to determine how many products can be fulfilled by stock products and how many are necessary

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to be produced; the orders are stored in a data file); applying a process development to the orders which have been subjected to the division process, based on a basic unit master and storing into a process development database (column 5, lines 32-41 – a feeding plan is determined from standard production periods based on previous orders); specifying an optimum production starting date based on the information of orders which have been subjected to the process development and a production pattern stored in a production pattern database, performing loading, and storing results of the loading into a production planning database (column 5, lines 32-41 – an optimal start date is determined based on standard production periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the latest feeding (start) date is 11/9); creating delivery date answer information based on said optimum production starting date (column 5, lines 32-41 – an optimal start date is determined based on standard production periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the latest feeding (start) date is 11/9); and wherein said production pattern describes a sequence of production of a plurality of products, and it set in such a manner that a production scheduling is repeated periodically and that the compliance rate of delivery date of a target product becomes a maximum (column 5, lines 32-67 – the delivery date is kept at a maximum, while the feeding day varies to accommodate the delivery date. For each different product, a feeding day is calculated. See column 5, lines 50-61 which specifically indicates more than one product is being produced and each product is scheduled in sequence (first process producing two apparatuses is scheduled so that it takes place prior to second process producing one apparatus)).

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Aoki does not explicitly teach prospect orders. Seth et al teaches gathering product queries and requests including customer committed orders as well as forecasted orders in an analogous art of production scheduling for the benefit of processing orders to arrive at a promised delivery date (column 5, lines 41-59 and abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to include both customer orders and forecasted (prospect) orders in the methodology of Aoki as a way to achieve the expected results of fully anticipating demand requests so as to ensure products are available when promised.

As per claim 6, Aoki teaches receiving information of customer orders and information of and storing into a received order database (column 2, lines 43-48 – order information is stored in an order data file); dividing orders stored in said received order database based on a reference master having various kinds of information about production materials registered therein, and storing the information of the orders which have been subjected to the division process to a received order division database (data file; column 5, lines 8-31 – ordered products are analyzed to determine how many products can be fulfilled by stock products and how many are necessary to be produced; the orders are stored in a data file); applying a process development to the orders which have been subjected to the division process, based on a basic unit master and storing into a process development database (column 5, lines 32-41 – a feeding plan is determined from standard production periods based on previous orders); specifying an optimum production starting date based on the information of orders which have been subjected to the process development and a production pattern stored in a production pattern database, performing loading, and storing results of the loading into a production planning database (column 5, lines 32-41 – an optimal start date is determined based on standard production

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periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the latest feeding (start) date is 11/9); creating delivery date answer information based on said optimum production starting date (column 5, lines 32-41 – an optimal start date is determined based on standard production periods, i.e., if delivery is scheduled for 11/30 and standard production period is 20 days, the latest feeding (start) date is 11/9); and wherein said production pattern describes a sequence of production of a plurality of products, and it set in such a manner that a production scheduling is repeated periodically and that the compliance rate of delivery date of a target product becomes a maximum (column 5, lines 32-67 – the delivery date is kept at a maximum, while the feeding day varies to accommodate the delivery date. For each different product, a feeding day is calculated. See column 5, lines 50-61 which specifically indicates more than one product is being produced and each product is scheduled in sequence (first process producing two apparatuses is scheduled so that it takes place prior to second process producing one apparatus).

Aoki does not explicitly teach prospect orders. Seth et al teaches gathering product queries and requests including customer committed orders as well as forecasted orders in an analogous art of production scheduling for the benefit of processing orders to arrive at a promised delivery date (column 5, lines 41-59 and abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to include both customer orders and forecasted (prospect) orders in the methodology of Aoki as a way to achieve the expected results of fully anticipating demand requests so as to ensure products are available when promised.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHNNA R. LOFTIS whose telephone number is (571)272-6736. The examiner can normally be reached on M-F 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brad Bayat can be reached on 571-272-6636. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/jl/
1/20/09

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624